

these objects. But the fact that the majority of shareholders may wish to keep the company in existence, and to exercise the powers to carry on a different kind of business, or even a similar business, will not prevent a dissenting shareholder from petitioning for a winding-up order. This will be so even if the company's memorandum specifically provides that each of its objects shall be a principal object, because a court must determine the real object for which the company was formed, and will allow a winding-up petition if this object has to all intents and purposes been abandoned.

In the present case, the company's substratum was clearly the restaurant business in the choice location which Shaw House offered, in the heart of the best shopping and tourist district in Singapore, and the company was actually a shelf company which the petitioner purchased to cloak the business with a corporate personality. Even during the recession in 1985 and 1986 when the company was unable to pay even the rent on the premises, the petitioner was minded to soldier on, and Chua himself was brought in to save the business. With the landlord's decision to redevelop the whole property and consequently to terminate all the tenancies, including the company's, it is clear that this restaurant business came to an end. Chua himself was involved in the steps taken to close the business, including terminating the employment of the all important Hong Kong chefs and other employees, and auctioning off the equipment, furniture and fittings. As a result, there was no longer any business long before the petition came on for hearing, and all the assets of the company had been realized and converted into cash deposits at the company's banks. In actual fact, therefore, the company's substratum had disappeared. I could not understand why Chua wanted the company to continue in existence, and oppose the petition, without withdrawing the obvious inference that for his own reasons he wanted to hang on to the control of the petitioner's share of the capital, free of interest. The suggestion by Chua that the substratum of the company had not been affected, as the company had only ceased to carry on its restaurant business because the landlords, the Shaw Foundation, were redeveloping Shaw House, and that he was looking for alternative premises to carry on the business or some other business was clearly an afterthought, for the sole purpose of supporting his opposition to the petition for a winding-up order, and was of no merit, especially as he appears to have been a relatively inactive participant in the actual management of the company's restaurant business. In such a situation, where the company's substratum has disappeared, and there is opposition by one of the two shareholder groups to continuing in business with the other, it is clearly '*just and equitable*' that the company be wound up, so that the cash assets can be distributed and each of the two groups can go his own way. For a court to refuse to order a winding-up

A and in effect force the warring parties to continue in partnership, when, as in the present case, it is clear that the parties can no longer work together would merely be to endorse an exercise in futility. In the circumstances, I ordered that the company be wound up, and made the necessary consequential orders for the appointment of the liquidator and for costs.

B Order accordingly.

Solicitors: *Spencer Gwee & Co; PK Wong & Advani; Chua Hay & Wee.*

Reported by *Mathavan Devadas*

MBF Finance Bhd v Yong Yet Miaw & Anor

D HIGH COURT (SINGAPORE) — ORIGINATING SUMMONS
NO 726 OF 1989
CHAO HICK TIN J
31 DECEMBER 1990

Civil Procedure — Registration of foreign judgment — Setting aside — Not just or convenient

E Words and Phrases — '*Not just or convenient*' — Rules of the Supreme Court 1970, O 67 r 9(3)

F The judgment debtors stood as guarantors for a debt owing to MBF from Sun Hun. MBF obtained summary judgment in the High Court of Malaya in Kuala Lumpur for M\$1,750,000 and interest plus M\$260,895.37 together with interest at 15% pa from 1 February 1986 until date of payment. MBF successfully applied for an order that the judgment be registered as a judgment of the High Court of Singapore. Subsequently the judgment debtors applied to have the registration of the judgment set aside. This was refused and the judgment debtors appealed. The judgment debtors relied on the fact that Sun Hun was resisting a claim for the money, including a counterclaim for breach of the loan agreement. On this basis they applied to set aside the registration on the ground that it was '*not just or convenient*'. It was also argued that the judgment of the Kuala Lumpur High Court was not clear in respect of interest.

G Held, dismissing the appeal:

H (1) A foreign judgment is not impeachable on its merits.

(2) The grounds upon which a Singapore court must not register a judgment of a Commonwealth country are set out in s 3(2) of the Reciprocal Enforcement of Commonwealth Judgments Act. Besides these statutory grounds, the court has a discretion not to register when it is '*not just and convenient*' or when there is some other sufficient reason not to register the judgment.

I (3) '*Just or convenient*' has the same effect as '*where it is practicable and the interests of justice require it*'.

(4) Nothing had been shown why a duly pronounced judgment of a Malaysian High Court should not be carried out. The commercial utility of such guarantees must not be

nullified. Sun Hun's counterclaim did not affect the judgment debtor's obligations under the guarantee.

(5) There was no doubt that M\$2,010,895.37 (M\$1,750,000 plus M\$260,895.37) was due. Even if there was an element of doubt it was not sufficient to set aside the registration.

[Editorial Note: The judgment debtors have appealed to the Court of Appeal vide Civil Appeal No 118 of 1990.]

Cases referred to

- 1 *Edwards v Picard* [1909] 2 KB 903 (folld)
- 2 *Hyundai Shipbuilding & Heavy Industries Co Ltd v Pour-naras* [1978] 2 Lloyd's Rep 502 (folld)
- 3 *PH Grace Pte Ltd v American Express* [1987] 1 MLJ 437 (folld)
- 4 *Lim Kim Guan v Four Seas Communications Bank Ltd* [1990] 1 MLJ 261 (distd)

Legislation referred to

Reciprocal Enforcement of Commonwealth Judgments Act
(Cap 264, 1985 Ed) ss 3, 5
Rules of the Supreme Court 1970 O 67

Nirmala Nair (Ms) for the judgment creditors.
Benedict Vijayan Peter for the judgment debtors.

Cur Adv Vult

Chao Hick Tin J: On 13 April 1988, the judgment creditors, MBF Finance Bhd (hereinafter called 'MBF'), obtained summary judgment in the High Court of Malaya in Kuala Lumpur for a sum of M\$1,750,000 plus M\$260,895.37, together with interest at 15% per annum from 1 February 1986 until full payment and costs of M\$250 against the first and second judgment debtors herein.

The judgment not being satisfied, MBF applied by this originating summons to have the judgment registered in Singapore pursuant to ss 3(1) and 5 of the Reciprocal Enforcement of Commonwealth Judgments Act (Cap 264, 1985 Ed) ('the Act'). The application was granted by the learned senior assistant registrar who on 29 November 1989 granted an order that the judgment be registered as a judgment of the High Court of Singapore. By that order liberty was also given to the judgment debtors, if they had grounds for so doing, to apply to the High Court of Singapore to have the registration of the judgment set aside. Accordingly, by way of a summons-in-chambers, the judgment debtors applied to have the registration set aside. The application was refused by the senior assistant registrar. The judgment debtors appealed and the matter came before me. I dismissed the appeal and I now give my reasons.

In support of the application to set aside the registration an affidavit was filed on 8 February 1990 by the second judgment debtor (who also deposed on behalf of the first judgment debtor). He said the following:

- (i) the judgment arose out of a debt amounting to, including interest, M\$2,038,068.16, allegedly owed

- A by Sun Hun Perumahan Sdn Bhd (hereinafter called 'Sun Hun') to MBF;
- (ii) MBF had in a separate action in Kuala Lumpur instituted on 5 November 1988 sued Sun Hun for the same, which claim was being resisted by Sun Hun on various grounds;
- (iii) Sun Hun in a separate action in Kuala Lumpur instituted on 23 November 1989 sued MBF for, inter alia, breach of the loan agreement;
- (iv) as the judgment sought to be registered in Singapore was directly connected with the two actions mentioned in (ii) and (iii) above, it would be unjust, in the event that Sun Hun should succeed in the two actions, to permit MBF to proceed with the enforcement of the judgment against the two judgment debtors herein.

I ought to state that the judgment was entered against the judgment debtors in the Kuala Lumpur High Court after their solicitor had made submission to the court.

- D An appeal was in fact against the judgment. However, when the appeal came on for hearing, the judgment debtors' solicitor withdrew the appeal. Similarly, when their application for a stay of execution came up for hearing on 29 July 1988, the judgment debtors' solicitor requested MBF's solicitor to mention on his behalf to have the application struck off. The judgment debtors in an affidavit filed herein on 19 March 1990 tried to explain that both the appeal and the application for a stay were withdrawn by their solicitor without their consent. They also blamed their solicitor for not correctly advising them of their rights.

Quite clearly the liability of the judgment debtors to MBF arose out of a guarantee which they signed in favour of MBF. The following were the relevant provisions of the guarantee:

Article II

Section 2(i)

In consideration of the lender's (ie MBF) promise to grant the loan to the borrower (ie Sun Hun) at our request ... we hereby jointly and severally guarantee repayment to the lender all sums of money ... payable by the borrower in the event of the borrower's default ... Our liability herein is co-extensive with that of the borrower.

Section 2.02

If and whenever the borrower shall make default in the payment of the moneys due and payable hereunder *we shall on demand by the lender pay to the lender all moneys* in regard to which such default has been made by the borrower ...

Section 2.03

This guarantee is in addition to and not in substitution for any other rights which the lender may have against the borrower or any third party and *may be enforced* without first having recourse to any such rights and *without taking any step or proceedings against the borrower* or any other guarantor or indemnifier.

Section 3.01

We hereby declare that our obligations herein shall not be discharged except by performance and then only to the extent of such performance ...

Section 7.01

If the borrower shall in any respect fail to perform any of its obligations governing the loan or commits any breach of its obligations pertaining thereto then we shall, in addition to our liability herein, jointly and severally as a separate covenant indemnify the lender and its respective assigns representatives and successors-in-title against all losses damages costs expenses or otherwise which may be incurred by the lender by reason of any default on the part of the borrower in performing and observing the agreements conditions covenants and undertakings on its part to be observed and performed.

Section 7.03

It is hereby agreed that ... a judgment (by default or otherwise obtained against the borrower) or a statement of account in writing showing the indebtedness of the borrower in relation to the subject matter of this guarantee which is duly certified by an authorized officer of the lender shall be binding and conclusive evidence against us ... for whatever purpose including as being conclusive evidence of indebtedness in a court of law. (Emphasis added.)

In his submission before me counsel for the judgment debtors said that he was not applying to have the registration set aside on any of the grounds set out in s 3(2) of the Act but on the ground that it was not just or convenient as spelt out in O 67 r 9(3). That rule reads:

Where the Court hearing an application to set aside the registration of a judgment registered under the Ordinance is satisfied that the judgment falls within any of the cases in which a judgment may not be ordered to be registered under section 3(2) of that ordinance or that is not just or convenient that the judgment should be enforced in Singapore or that there is some other sufficient reason for setting aside the registration, it may order the registration of the judgment to be set aside on such terms as it thinks fit.

I should add that the element of 'just and convenient' is also provided in s 3(1) of the Act. That section states that the High Court may order a Commonwealth judgment to be registered if in all the circumstances of the case it thinks it is just and convenient that the judgment should be enforced in Singapore.

Counsel for the judgment debtors submitted that for the grounds set out in the affidavit of 8 February 1990, which I have alluded to above, it would not be just or convenient to have the judgment registered in Singapore. He said that MBF should have sued both the principal debtor and the guarantors jointly. It was further submitted that the judgment of the Kuala Lumpur High Court was not clear in relation to the interest aspect.

I think it is a well established principle in conflict of laws that a foreign judgment is not impeachable on its

merits. This is succinctly stated in *Cheshire & North's Private International Law* (11th Ed) at p 361 as follows:

It is well established that in an action on a foreign judgment the English Court is not entitled to investigate the propriety of the proceedings in the foreign court. Erroneous judgments delivered by a foreign court are not void in England. The merits of the case have been argued and determined and if one of the parties is discontented with the decision his proper course is to take appellate proceedings in the forum of the judgment. The English tribunal, in other words, cannot sit as a Court of Appeal against a judgment pronounced by a court which was competent to exercise jurisdiction over the parties.

In the interest of comity of nations, I think this same principle should apply in Singapore.

The grounds upon which a Singapore court must not register a judgment of a Commonwealth country are set out in s 3(2) of the Act and they relate mainly to the situations where the original court acted without jurisdiction or in breach of the rules of natural justice or where there was fraud or an appeal against that judgment is pending or where it would be against public policy to effect the registration. I accept the fact that besides these statutory grounds, the court has a discretion to refuse registration under s 3(1) where it is shown that it is 'not just and convenient' or, applying r 9(3), where there is some other sufficient reason not to register the judgment.

The second judgment debtor was an officer of Sun Hun. He knew or should have known the state of the accounts between Sun Hun and MBF as he had even affirmed a long affidavit on behalf of Sun Hun in support of an application for an interim injunction, in the action instituted by Sun Hun in the Kuala Lumpur High Court against MBF. If the judgment debtors were serious about what they said they should have pursued the appeal in Kuala Lumpur against the summary judgment. Instead the judgment debtors withdrew the appeal against the judgment and also withdrew their application for a stay of execution. Now they put the blame on their previous solicitor for the withdrawals. Yet, up to the date of the hearing before me, they had not applied to have the appeal restored or reapplied for a stay of execution or taken any action against their previous solicitor for withdrawing the appeal and the application for a stay without permission. This whole complaint against the previous solicitor was a sham. However, there was evidence before me that the judgment debtors negotiated with MBF with regard to the payment of the summary judgment.

Under the guarantee it was expressly provided that there was no necessity for MBF to take any step or action against Sun Hun before it could sue the two judgment debtors, as guarantors. The guarantee also stated that the guarantors' liabilities were co-extensive with those of the borrower. The guarantee was also in

addition to and was not to be in any way prejudiced or affected by any collateral or other security held by the lender. The guarantors' obligations would be discharged only by performance. A statement of account of an authorized officer of MBF was to be conclusive. If there were substance in the matters they had raised before me to have the registration of the judgment set aside, I would have expected them to be more vigorous in pursuing their remedies in the Kuala Lumpur High Court.

In *Edwards v Picard*,¹ Fletcher Moulton LJ said that the expression 'just or convenient' appearing in s 25(8) of the Judicature Act 1873, which related to the grant of a mandamus or an injunction, had the same effect as 'where it is practicable and the interests of justice require it'.

In the light of the foregoing I did not see anything unjust, inconvenient or impracticable to enforce the judgment. Nothing had been shown why a duly pronounced judgment of a Malaysian High Court should not be carried out. The commercial utility of such a kind of guarantee must not be nullified: see *Hyundai Shipbuilding & Heavy Industries Co Ltd v Pournaras*.² The fact that the principal debtor Sun Hun might have a counterclaim against MBF did not affect the judgment debtors' obligations under the guarantee. There could be no stay of execution against the judgment debtors on that account: see *PH Grace Pte Ltd v American Express*.³

I turn next to consider the argument that the judgment was vague. The original judgment was in the Malay language and a certified translation of the relevant part was as follows:

it is this day adjudged that the first and second defendants do pay the plaintiffs the sum of M\$1,750,000 and interest, plus M\$260,895.37 with interest at 15% per annum from 1 February 1986 until the date of full payment and costs of \$250.

It seemed to me that the two words 'and interest' in the judgment were clearly redundant. Without those two words it appeared reasonably clear that the two sums (M\$1,750,000 and M\$260,895.37) would carry interest at 15% from 1 February 1986. Be that as it may, even if there was a doubt as to the sum on which the interest of 15% should be calculated, there could be no doubt that the sum of M\$2,010,895.37 (M\$1,750,000 plus M\$260,895.37) was due from the judgment debtors to MBF under the judgment. I did not think that that element of doubt, even if it did exist, would be a sufficient reason or circumstance to set aside the registration. Counsel for the judgment debtors cited to me the case *Lim Kim Guan v Four Seas Communications Bank Ltd*⁴ where Thean J held that a bankruptcy notice should specify on the face of it what precisely the debtor was required to pay in order to avoid an act of bank-

ruptcy and where the formula for calculating the interest was not apparent on the face of the bankruptcy notice, the notice was bad. It seemed to me that a bankruptcy notice was a different kind of a case altogether. Under s 3(1) of the Bankruptcy Act (Cap 20, 1985 Ed) the notice must require the debtor to pay 'the judgment debt or sum ordered to be paid in accordance with the terms of the judgment or order'. The courts have strictly construed and treated a bankruptcy notice because of the serious consequences which flow from a non-compliance with the notice. But here we were not dealing with a bankruptcy notice. The effect of registration was that the judgment would from the date of registration be of the same force and effect, and proceedings could be taken thereon, as if it had been a judgment originally obtained in Singapore. The Singapore court would have the same control and jurisdiction over the judgment as far as execution was concerned as it had over similar judgments given by itself. A judgment was no less a judgment even if some words therein could give rise to difficulties. That would be a matter for the judgment creditors to sort out or overcome in due time. MBF might well decide to forgo the interest aspect in the judgment or only ask for interest on M\$1,750,000. I did not think the court need be concerned with this aspect at this juncture.

Appeal dismissed.

Solicitors: *Madhavan Louis & Partners; Ramdas & Wong.*

Reported by S Surenthiraraj

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